

Steering Committee:

Roberto Gutierrez, Chairman
Dianne White Delisi, Vice Chairman

Harold Dutton
Peggy Hamric
Bob Hunter

Carl Isett
Mike Krusee

Jim McReynolds
Geanie Morrison
Elliott Naishtat

Joe Pickett
Robert Puente

Elvira Reyna
G.E. "Buddy" West
Steve Wolens

HOUSE RESEARCH ORGANIZATION

daily floor report

Monday, June 30, 2003

78th Legislature, First Called Session, Number 1

The House convenes at 10 a.m.

Gov. Rick Perry has called the first special session of the 78th Legislature, beginning today, to consider congressional redistricting. This special session is the first since the fourth called session of the 72nd Legislature in November-December 1992, the longest period between special sessions in state history. This edition of the Daily Floor Report reviews special session rules and procedures.

The Select Committee on School Finance Subcommittee on Facilities will hold a public hearing today on final adjournment/recess in Capitol Extension Room E2.010.



Roberto Gutierrez
Chairman
78(1) - 1



Dianne White Delisi
Vice Chairman

SPECIAL SESSION RULES AND PROCEDURES

After notifying the legislative leaders by letter on June 18 of his intention to call a special session, Gov. Rick Perry issued the official proclamation on June 23 calling the 78th Legislature into its first special session, to begin at 10 a.m. on Monday, June 30, 2003.

The governor's proclamation specified the purpose for the special session as being "to consider legislation relating to congressional redistricting."

The governor may add other subjects for consideration at any point before or during the special session, which may last no more than 30 days.

Special Session Procedures

The rules and procedures for regular sessions also apply to special sessions, with a few exceptions intended to accelerate the process during the shorter session:

- Notice of committee public hearings must be posted at least 24 hours in advance during special sessions, rather than five calendar days as during a regular session (House Rule 4, sec. 11);
- Calendars and printed copies of bills must be distributed to members' mailboxes at least 24 hours before they may be considered, rather than 36 hours as during a regular session (Rule 6, sec. 16; Rule 8, sec. 14);
- No extension of time is allowed for floor debate during the final five days, excepting Sundays, of a special session, rather than the final 10 days as during a regular session (Rule 5, sec. 28);
- Prefiling of legislation may begin 30 days before the start of the special session (Rule 8, sec. 7);
- The "order-of-business" restrictions in Texas Constitution, Art. 3, sec. 5 limiting consideration of legislation during certain periods of the regular session do not apply to special sessions, nor do any deadlines limiting introduction or end-of-session consideration of legislation;
- Under the seldom-used procedure for bills reported unfavorably from committee, the deadline for filing a signed minority report is one day during the final seven calendar days of a special session, rather than the final 15 days as during a regular session, before the bill is considered dead (Rule 4, sec. 29).

The prohibition against making or accepting a political contribution to statewide officeholders, legislators, legislative caucuses, or related specific-purpose committees starting 30 days before a regular session and ending on adjournment does not apply to special sessions (Election Code, secs. 253.034, 253.0341) (Under HB 1606 by Wolens, enacted during the regular session, as of September 1, 2003, the prohibition will continue 20 days following adjournment of a regular session.) However, under Election Code, sec. 254.0391, statewide officeholders, legislators, candidates for those offices, and related specific-purpose committees that accept a political contribution during the period beginning on the date the governor signs the proclamation calling a special session and continuing through the session's final adjournment must report the contribution to the Texas Ethics Commission no later than 30 days after the date of final adjournment of the special session. The report is not required if another contribution report is due not later than 10 days after the date a report would be due under this section.

Under Texas Constitution, Art. 3, sec. 24 and 1 TAC §50.1, legislators and the lieutenant governor receive a per diem amount (currently \$125) for each day that the Legislature is in special session.

Art. 3, sec. 49a of the Constitution requires the comptroller to issue a supplemental revenue estimate at any special session of the Legislature.

Number and Duration

Art. 3, sec. 40 of the Constitution limits each special session to 30 days. This means calendar days, not legislative days, so the special session that begins on Monday, June 30 must end by midnight on Tuesday, July 29.

The Constitution does not limit the number of special sessions that the governor may call. The six special sessions of the 71st Legislature called by Gov. William P. Clements, Jr., in 1989-90 on workers' compensation (two sessions in 1989) and public education (four sessions in 1990) set the record for most special sessions called for a single legislature. The 71st Legislature also set the modern record for total number of days in session by meeting 292 days — 140 in regular session and 152 days in six special sessions. (The all-time record for days in session is held by the 12th Legislature, which met for 353 days in four sessions in 1870-71.) The period from December 1992, when the last special session ended, until June 2003 has been the longest in which a governor did not call a special session.

The governor need not give any advance notice of special session. For example, the brief special sessions on indigent health care in 1985 and on tort reform in 1987 convened the day after final adjournment of the regular session, only a few hours after the governor had issued the call. Back-to-back special sessions are allowed. The fifth called session of the 71st Legislature began on May 2, 1990, within hours of *sine die* adjournment of the fourth called session on May 1.

The Legislature need not meet for the entire 30 days of a special session and may adjourn *sine die* without completing action on any or all of the subjects designated by the governor. For example, the 38th Legislature, called into special session beginning on March 15, 1923, by Gov. Pat M. Neff to act on appropriations bills and enforcement of the prohibition laws, met for only one hour, just long enough for both houses to convene and adjourn *sine die*. The one-hour special session in 1923 and the third called session of the 71st Legislature in 1990 have been the only special sessions in which no bills were enacted.

The Governor's Call

Once the regular legislative session, which may last no more than 140 days every two years, has finally adjourned *sine die*, the Legislature may meet in special session to consider legislation only when called by the governor. Art. 4, sec. 8 of the Texas Constitution authorizes the governor to call special sessions "on extraordinary occasions." The governor's proclamation calling the session (the "call") must specify the purpose for which the Legislature is convened.

The House and the Senate are authorized by law to convene without being called by the governor only for the limited purpose of impeachment proceedings. In December 2000, when then-Lt. Gov. Rick Perry became governor upon the resignation of George W. Bush, the Senate convened as a committee of the whole to elect an acting lieutenant governor, under Texas Constitution, Art. 3, sec. 9. Also, either house may meet informally at any time but may not transact legislative business. For example, on May 30, 1986, the members of the House met in the House Chamber at the request of then-Speaker Gib Lewis for a "briefing session" on the state's economic difficulties. Otherwise, only the governor may call a special session.

Under Art. 3, sec. 40 of the Constitution, when the Legislature is convened in special session, "there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, or presented to them by the Governor." The governor may at any time expand the special-session call to include additional topics.

Texas courts have declined to investigate whether a law enacted during a regular or special session had been properly considered by the Legislature, including whether it was a subject within the governor's special-session call. Under the enrolled bill rule, if a bill has been "enrolled," or passed by both houses and signed by the governor, the courts generally do not consider whether any procedural rules were violated during the legislative process (*City of Houston v. Allred*, 71 S.W. 2d 251 (1934); *Maldonado v. State*, 473 S.W. 2d 26 (1971)).

In one early case, *Manor Casino v. State*, 34 S.W. 769 (1896), the Court of Civil Appeals had held that a law enacted during an 1888 special session was invalid because its

subject had not been included in the governor's written proclamation and, therefore, the Legislature had no jurisdiction to enact the law. Subsequent approval of the bill by the governor did not grant the Legislature retroactive jurisdiction to enact the statute, the court said. However, in *Jackson v. Walker*, 49 S.W. 2d 693 (1932), the Texas Supreme Court found that this civil-appeals court decision had never been followed by other Texas appellate courts and held that it was not valid law.

The Supreme Court in *Jackson v. Walker* laid down the general rule that an enrolled statute is conclusive proof that an act was passed as required by the Constitution and that the courts are not to examine the special-session proclamations of the governor or the House or Senate journals to invalidate the law.

Limits on subject matter

The governor's call must set forth the “purpose for which the Legislature is convened” (Art. 4, sec. 8). The courts have held that the governor need not “state the details of legislation” (*Ex parte Fulton*, 215 S.W. 331 (1919)). In an 1886 case, the Texas Supreme Court ruled that the “subject” of a special session called to reduce taxes was in fact “the whole subject of taxation,” so that a bill *raising* taxes also could be considered (*Baldwin v. State*, 3 S.W. 109).

The limitation in Art. 3, sec. 40 on the subject matter of legislation considered during a special session may be enforced in two ways. The governor may veto any bill not included in the call. Also, any legislator may raise a point of order that legislation under consideration is not within the scope of a subject specified in the governor’s call.

The limitation on subject matter considered during a special session is subject to interpretation by the presiding officer of each house. Rulings by the presiding officers during the most recent special sessions indicate that the House and the Senate both usually take a broad view of the scope of the governor's call. For example, during the second called session of the 69th Legislature in 1986, Gov. Mark White had included within his call the subjects of cutting state spending and temporarily increasing the state sales-tax rate. Both presiding officers overruled points of order raised against consideration of a bill permitting pari-mutuel wagering on horse racing and greyhound racing, deciding that it was a measure enhancing state revenue and all measures dealing with “state finance” were open for consideration.

Prior to 1987, the annotations to the House Rules directed that the presiding officer and individual legislators should “strictly construe” and “rigidly adhere” to the limitation on the subject matter that may be considered during a special session. More recently, annotated editions of the House Rules have included a much broader directive on interpreting Art. 3, sec. 40:

Traditionally, it has been held that the legislature has broad discretion within the boundaries of the subjects submitted by the governor during a called session. The speaker is required to determine from time to time whether specific items of legislation are within the parameters of the subjects the governor has submitted. In making these determinations, the speaker is guided by the practice consistently followed by presiding officers of the house and permits the broadest possible latitude of legislative consideration within the limits of the constitution. Only with free and open consideration of all the issues raised by the subjects the governor has laid before the legislature can representative government function as the framers of our constitution intended (House Rules, 2003 edition, pp. 156-157).

Although the constitutional provision governing the subject matter in the governor's special-session call has been construed broadly in recent years, it still places some limits on the legislation that may be considered. For example, during the fifth called session of the 71st Legislature in 1990, then-Speaker Gib Lewis sustained points of order raised against bills involving state limited banking associations, state savings banks, the addition of licensed drivers to the jury pool, county road district bond refinancing, county land sales by sealed bid, indemnity provisions in mineral agreements, and election of the Nolan County Hospital District board — all because they were not within the scope of subjects designated by the governor for consideration during the special session.

Referring legislation to committee

The practice in recent special sessions for bills and resolutions on subjects not within the governor's call has been to routinely read and refer them to committee. Numerous bills on subjects not within the governor's call have been reported from committee and passed by the House and the Senate without objection during special sessions in recent years.

As with the broader interpretation of subjects within the governor's call, the policy on first reading and referral to committee of legislation on subjects that are not within the governor's call has changed in recent years. Editions of the House Rules prior to 1987 had disapproved of the practice of referring to committee all legislation introduced, regardless of whether the subject was within the governor's call. More recently, the "Explanatory Note" to the House Rules dealing with special sessions has stated that while both procedures have been followed in the past, the current practice used in recent special sessions has been to admit to first reading and refer to committee all introduced legislation, regardless of whether the subject falls within the governor's call. It notes that this practice "does not diminish the right of a member to later challenge a measure on the ground that it did not relate to a subject submitted by the governor." It also notes that the general referral procedure can be advantageous because it activates the committee process, thereby expediting consideration of subjects that the governor may submit later (House Rules, 2003 edition, p. 157).

Consideration of amendments to legislation

The broad interpretation of the scope of the governor's call also applies to amendments. In a precedent cited in the current edition of the annotated House rules (pages 157-159), Speaker Waggoner Carr determined that "it was not the intention of this section (Art. 3, sec. 40, of the Constitution) to require the Governor to define with precision as to detail the subject of legislation, but only in a general way, by his call, to confine the business to the particular subjects . . . It is not necessary nor proper for the Governor to suggest in detail the legislation desired. It is for the Legislature to determine what the legislation shall be."

Speaker Carr ruled that amendments to a bill under consideration did not have to be weighed against the standard set by Art. 3, sec. 40. As long as the amendment was germane to the bill and the bill itself was within the scope of the call, the amendment would be permissible.

Resolutions

House Rule 10, sec. 7, states, "The subject matter of house resolutions and concurrent resolutions does not have to be submitted by the governor in a called session before they can be considered." However, the governor may veto concurrent resolutions.

Constitutional amendments, which are proposed by joint resolution, could not be considered during a special session until 1972. In that year, the voters approved an amendment to Art. 17, sec. 1, allowing constitutional amendments to be considered "at any special session when the matter is included within the purposes for which the session is convened."

The governor does not have the power to veto joint resolutions and could not block a proposed constitutional amendment that was not within the call. Therefore, it is for the Legislature alone to decide whether a proposed constitutional amendment is within the scope of the governor's call.

Since adoption of the 1972 amendment, presiding officers generally have sustained points of order raised against proposed constitutional amendments when the subject matter is not within the scope of the governor's call in the same manner as for bills.

Effective date

Art. 3, sec. 39 of the Constitution states that a bill passed by the Legislature becomes effective 90 days after the adjournment of the session in which it is enacted. If a bill passes both the House and the Senate with a record vote of approval by at least two-thirds of all

members, it can become effective immediately or on a specified date sooner than 90 days. For example, for a bill enacted during the first called session to take effect sooner than 90 days after the session finally adjourns, it would have to be approved by at least 100 votes in the House and 21 votes in the Senate.